

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 22**

IRONWORKERS, LOCAL 11

And

**Cases: 22-CB-237312; 22-CB-230929;
22-CB-246555; 22-CB-253114**

**RICHARD MAGLIONE, KESHA GREEN AND
KEVIN BABILONIA,**

Individuals

**ORDER CONSOLIDATING CASES, CONSOLIDATED
COMPLAINT AND NOTICE OF HEARING**

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the Board) and to avoid unnecessary costs or delay, IT IS ORDERED THAT Case No. 22-CB-237312, which is based on a charge filed by Richard Maglione (Charging Party Maglione), an Individual, Cases No. 22-CB-230929 and 22-CB-253114 which are based on charges filed by Kevin Babilonia (Charging Party Babilonia), an Individual, and Case No. 22-CB-246555, which is based on a charge filed by Kesha Green (Charging Party Green), an Individual, respectively and collectively ("Charging Parties) against Ironworkers, Local 11, are consolidated.

This Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, which is based on these charges, is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq. and Section 102.15 of the Board's Rules and Regulations, and alleges Respondent has violated the Act as described below.

1. (a) The charge in Case No. 22-CB-237312 was filed by Charging Party Maglione on March 7, 2019, and a copy was served by regular mail on Respondent on March 8, 2019.

(b) The first amended charge in Case No. 22-CB-237312 was filed by Charging Party Maglione on April 23, 2019, and a copy was served by regular mail on Respondent on April 24, 2019.

(c) The second amended charge in Case No. 22-CB-237312 was filed by Charging Party Maglione on May 16, 2019, and a copy was served by regular mail on Respondent on May 20, 2019.

(d) The third amended charge in Case No. 22-CB-237312 was filed by Charging Party Maglione on June 28, 2019, and a copy was served by regular mail on Respondent on July 2, 2019.

(e) The fourth amended charge in Case No. 22-CB-237312 was filed by Charging Party Maglione on July 19, 2019, and a copy was served by regular mail on Respondent on July 22, 2019.

(f) The fifth amended charge in Case No. 22-CB-237312 was filed by Charging Party Maglione on October 29, 2019, and a copy was served by regular mail on Respondent on that same day.

2. (a) The charge in Case No. 22-CB-230929 was filed by Charging Party Babilonia on July 22, 2019, and a copy was served by regular mail on Respondent that same day.

(b) The first amended charge in Case No. 22-CB-230929 was filed by Charging Party Babilonia on September 23, 2019, and a copy was served by regular mail on Respondent on September 24, 2019.

3. The charge in Case No. 22-CB-246555 was filed by Charging Party Green on August 13, 2019, and a copy was served by regular mail on Respondent on August 14, 2019.

4. The charge in 22-CB-253114 was filed by Charging Party Babilonia on December 9, 2019, and a copy was served by regular mail on December 10, 2019.

5. (a) At all material times, the Associated Construction Contractors of New Jersey (ACCNJ), with an office and a place of business in Edison, New Jersey, has been an organization composed of various employers engaged in the construction industry, one purpose of said ACCNJ is to represent its employer-members in negotiating and administering collective-bargaining agreements with labor organizations, including Respondent.

(b) The employer-members of ACCNJ described above in paragraph 5(a), in conducting their various business operations in the preceding 12-month period, collectively purchased and received at their facilities located within the State of New Jersey, goods valued in excess of \$50,000, directly from points outside the State of New Jersey.

(c) The employer-members of ACCNJ described above in paragraph 5(a), in conducting their various business operations in the preceding 12-month period, collectively performed services valued in excess of \$5,000 in states other than the State of New Jersey.

(d) At all material times the employer-members of ACCNJ have been employers engaged in commerce within the meaning of Section 2(2), 2(6) and 2(7) of the Act.

6. (a) At all material times Construction Contractors Labor Employers of New Jersey (CCLE), with an office and a place of business in Allenwood, New Jersey, has been an organization composed of various employers engaged in the construction industry, one purpose of CCLE is to represent its employer-members in negotiating and administering collective-bargaining agreements with labor organizations, including Respondent.

(b) The employer-members of CCLE, described above in paragraph 6(a), in conducting their various business operations in the preceding 12-month period, collectively purchased and received at their facilities located within the State of New Jersey, goods valued in excess of \$50,000, directly from points outside the State of New Jersey.

(c) The employer-members of CCLE, described above in paragraph 6(a), in conducting their various business operations in the preceding 12-month period, collectively performed services valued in excess of \$5,000 in states other than the State of New Jersey.

(d) At all material times the employer-members of CCLE have been employers engaged in commerce within the meaning of Section 2(2), 2(6) and 2(7) of the Act.

7. (a) At all material times the New Jersey Steel Association, Inc. (NJSAI), with an office and a place of business in Springfield, New Jersey, has been an organization composed of various employers engaged in the construction industry, one purpose of NJSAI is to represent its employer-members in negotiating and administering collective-bargaining agreements with labor organizations, including Respondent.

(b) The employer-members of NJSAI, described above in paragraph 7(a), in conducting their various business operations in the preceding 12-month period, collectively purchased and received at their facilities located within the State of New Jersey, goods valued in excess of \$50,000, directly from points outside the State of New Jersey.

(c) The employer-members of NJSAI described above in paragraph 7(a), in conducting their various business operations in the preceding 12-month period, collectively performed services valued in excess of \$5,000 in states other than the State of New Jersey.

(d) At all material times the employer-members of NJSAI have been employers engaged in commerce within the meaning of Section 2(2), 2(6) and 2(7) of the Act.

8. (a) At all material times the Rigging Contractors of New Jersey (RCNJ), with an office and a place of business in Sommerville, New Jersey, has been an organization composed of various employers engaged in the construction industry, one purpose of RCNJ is to represent its employer-members in negotiating and administering collective-bargaining agreements with labor organizations, including Respondent.

(b) The employer-members of the RCNJ described above in paragraph 8(a), in conducting their various business operations in the preceding 12-month period, collectively purchased and received at their facilities located within the State of New Jersey, goods valued in excess of \$50,000, directly from points outside the State of New Jersey.

(c) The employer-members of RCNJ, described above in paragraph 8(a), in conducting their various business operations in the preceding 12-month period, collectively performed services valued in excess of \$5,000 in states other than the State of New Jersey.

(d) At all material times the employer-members of RCNJ have been employers engaged in commerce within the meaning of Section 2(2), 2(6) and 2(7) of the Act.

9. At all material times Respondent has been a labor organization within the meaning of Section 2(5) of the Act.

10. At all material times the following individuals held the positions set forth opposite their respective names and have been agents of Respondent within the meaning of Section 2(13) of the Act:

Ray Woodall	--	Business Manager
Mike Leslie	--	Business Agent
Mike McKernan	--	Business Agent
John Wade	--	Business Agent

James Creagen	--	Business Agent
Rich Malcolm	--	Business Agent
Steven Sweeney	-	Int'l Vice President/District Representative

11. At all material times, Respondent, ACCNJ and CCLE have been parties to a collective bargaining agreement (CBA), the most recent of which was extended by Memorandum of Understanding expiring on June 30, 2021, and which contains the following language requiring that Respondent be the exclusive source of referrals of employees for employment with employer-members of ACCNJ and CCLE:

Every Employer bound hereby agrees that he will recruit all employees covered hereby exclusively through the several hiring halls operated by the Union and/or its Locals. The said hiring halls shall be operated by the Union and its Locals in a non-discriminatory manner. (Rigging CBA : Article XIV, Section 1)

12. At all material times, Respondent has maintained a collective bargaining agreement ("Structural CBA") with NJSAI and RCNJ and individual employers, the most recent of which expires on June 30, 2021, and which contains the following language requiring that Respondent be the exclusive source of referrals for employees for employment with employer-members of the Structural CBA:

Every Employer bound hereby agrees that he will recruit all employees covered hereby exclusively through the several hiring halls operated by Local 11. The said hiring halls shall be operated by Local 11 in a nondiscriminatory manner. (Structural CBA : Article XV)

13. At all material times, since at least 2018, Respondent has been required to abide by a set of rules and procedures governing the operation of its hiring hall which requires, among other things, that:

(a) respondent refer hiring hall applicants to jobs with employer-member/signatories to the CBA and Structural CBA, in the order of their place on the hiring hall referral list

("Referral List"), except where:

i. the next available applicant on the referral list does not possess the skills and abilities requested by the contractor, in which case the Respondent would refer the first applicant on the referral list that possesses such skills and abilities;

ii. A contractor may request a specific member(s). When such a specific request is made, the member requested will be referred to the contractor out of sequence of the referral list and as such will not follow the normal referral order;

(b) if a job referral lasts less than three (3) days, a member can request to be placed on the "short list" (One-Day List) and will be referred out based on his or her placement on that list. If a member's name is called and s/he is not present or refuses the referral, it will be counted as an absence;

(c) respondent select and refer applicants for employment without discriminating against such applicants by reason of membership of non-membership in the Union; and

(d) a copy of the hiring hall rules and procedures be posted in a bulletin board in Respondent's office.

Case: 22-CB-237312

14. Since about September 7, 2018, Respondent, at its Bloomfield and Perth Amboy locations has operated its exclusive hiring hall in an arbitrary and discriminatory manner by deliberately departing from rules and procedures governing its hiring hall by:

(a) failing to maintain full and complete referral records;

(b) failing to maintain and communicate to its job applicants rules for job referrals;

(c) failing to post its hiring hall rules, including rules regarding Responsibility to

Replace;

(d) failing and refusing to maintain and follow hiring rules and procedures which require referral based on applicants place on the Referral List, rather than for favoritism or some other arbitrary or discriminatory reason;

(e) refusing to maintain and follow clear non-arbitrary hiring hall rules and procedures regarding applicants placement on the One-Day List;

(f) refusing to allow applicants, including Charging Parties Maglione and Babilonia, who were referred to jobs that lasted less than three (3) days, to sign the One-Day List;

(g) failing to refer Charging Party Maglione to jobs which he was eligible for based on his place on the Referral List, to employers who exclusively use Respondent as a source of employment, and instead referring applicants who signed the Referral List on a date after Maglione;

(h) failing and refusing to refer applicants, including Charging Party Green, to jobs which they were eligible for based on their place on the Referral List, with employers who exclusively use Respondent as a source of employment, and instead referring applicants who signed the Referral List on a date after Green and other applicants;

(i) failing and refusing to allow non-members participants, including Charging Party Babilonia, to sign the Referral List;

(j) failing to apply objective criteria to its referral of Travelers or other job applicants who are non-members; and

(k) refusing to allow applicants, including Charging Party Maglione, to review the Referral List upon request.

15. Respondent engaged in the conduct described above in paragraph 14 for arbitrary and discriminatory reasons.

16. Since about September 7, 2019 and at all material times Respondent, at its Bloomfield and Perth Amboy locations, refused to refer Charging Party Maglione to jobs, which he was eligible for based on his place on the Referral List, with employers who exclusively use Respondent as a source of employment, because Charging Party Maglione:

- (a) requested to review the Referral List, and
- (b) complained about Respondent to the International Association of Ironworkers.

17. On about October 22, 2018, February 16, 2019 and June 21, 2019, Respondent refused to allow Charging Party Maglione to sign the One-Day List.

18. About March 11, 2019, Respondent refused Charging Party Maglione's request to review Steward Reports, his personnel file and letters from employer-members/signatories to the CBA and Structural CBA, who allegedly refused to hire Charging Party Maglione.

19. Respondent engaged in the conduct described above in paragraph 16 through 18 for reasons that are arbitrary and discriminatory.

Case 22-CB-230929

20. On about September 24, 2019 and December 4, 2019, Respondent at its Bloomfield and Perth Amboy locations, failed and refused to allow Charging Party Babilonia to sign the Referral List for jobs, which he was eligible for based on his place on the Referral List, with employers who exclusively use Respondent as a source of employment and instead referred other applicants who signed the Referral List after Babilonia.

Case 22-CB-246555

21. At all material times since at least February 7, 2018, Respondent, at its Bloomfield and Perth Amboy locations, failed and refused to refer Charging Party Green to jobs which she was eligible for based on her place on the Referral List, with employers who exclusively use

Respondent as a source of employment, and instead referred other applicants who signed the Referral List after Green.

22. Respondent engaged in the conduct described above in paragraphs 21 and 22 for reasons that are arbitrary and discriminatory.

Case 22-CB-253114

23. (a) About October 16, 2019, Respondent implemented a priority referral system that divided job applicants among the following four (4) priority groups :

Group 1 - All applicants for employment who: (a) (1) have fifteen or more years' experience in the trade; or (2) have four (4) or more years' experience in the trade and have either passed a recognized journeyman examination or have been certified as a journeyman by an Apprenticeship Committee; and (b) are residents of the geographical jurisdiction constituting the normal construction labor market; and (b) of the geographical jurisdiction constituting the normal construction labor market; and (c) have been employed for a period of at least one (1) year in the last four (4) years under any collective bargaining agreement to which Local 11 is bound;

Group 2 - All applicants for employment who have four (4) or more years' experience in the trade and have passed a recognized journeyman examination or have been certified as a journeyman by an Apprenticeship Committee.

Group 3 - applicants for employment who have two (2) or more years' experience in the trade, are residents of the geographical jurisdiction constituting the normal construction labor market and who have been organized by an Iron Worker Local Union and who have been employed for at least six (6) months in the last three (3) years in the trade under a collective bargaining agreement between Local 11 and the Contractors Associations.

Group 4 - All applicants who have worked in the trade for more than one (1) year.

(b) The priority referral system described above in paragraph 23 gave preference to applicant members over non-members who had not had the opportunity to complete Respondent's apprenticeship program.

(c) Respondent engaged in the conduct described above in paragraphs 23(a) and 23(b) in order to disadvantage non-members applicants, including Babilonia and other applicants.

24. On about November 27, 2019 and continuing to date, Respondent has refused Charging Party Babylonia's request to access and copy the Referral List.
25. On about November 17, 2019 and December 5, 2019 Respondent refused to allow Charging Party Babilonia to sign the One-Day List.
26. Respondent engaged in conduct described above in paragraphs 23 through 25 for arbitrary and discriminatory reasons.
27. By engaging in the conduct described above in paragraphs 14, 16 through 18, and 20 through 25, Respondent has failed to represent the Charging Parties and all other hiring hall users for reasons that are arbitrary, discriminatory, or in bad faith, and has breached the fiduciary duty it owes to all of its hiring hall users.
28. By the conduct described above in paragraphs 14, 16 through 18, and 20 through 25, Respondent has been restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(b)(1)(A).
29. By the conduct described above in paragraphs 14, 16 through 18, and 20 through 25, Respondent has been attempting to cause an employer to discriminate against its employees in violation of Section 8(a)(3) of the Act in violation of Section 8(b)(2) of the Act.

The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

WHEREFORE, as part of the remedy for the unfair labor practices alleged above in paragraphs 14, 16 through 18, and 20 through 25, the General Counsel seeks and Order requiring that Respondent make Charging Parties and any other affected employees, whole for any loss of earnings suffered as a result of the unfair labor practices alleged herein.

General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices herein.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before March 10, 2020, or postmarked on or before March 9, 2020.** Respondent also must serve a copy of the answer on each of the other parties. The answer must be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. Responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other

parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on the **28th day of April, 2020, 9:30 a.m.** at 20 Washington Place, 5th Floor, Newark, New Jersey and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated: February 25, 2020



DAVID E. LEACH III, REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 22
20 WASHINGTON PLACE, FLOOR 5
NEWARK, NJ 07102-3127

Attachments

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 22**

IRONWORKERS, LOCAL 11

and

**Case Nos. 22-CB-237312; 22-CB-230929;
22-CB-246555; 22-CB-253114
22-CB-259493; 22-CB-262466**

**RICHARD MAGLIONE, KESHA GREEN,
KEVIN BABILONIA AND EVERTON BRAMBLE,**

Individuals

**ORDER CONSOLIDATING CASES
SECOND CONSOLIDATED COMPLAINT AND NOTICE OF HEARING**

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the Board) and to avoid unnecessary costs or delay, IT IS ORDERED THAT Cases 22-CB-237312, filed by Richard Maglione, an Individual (Charging Party Maglione), Case 22-CB-230929 and 22-CB-253114 filed by Kevin Babilonia, an Individual (Charging Party Babilonia) and Case 22-CB-246555, filed by Kesha Green, an Individual (Charging Party Green), in which a Consolidated Complaint and Notice of Hearing issued on February 24, 2020, be consolidated with Case 22-CB-262466, filed by Charging Party Maglione and Case 22-CB-259493, filed by Everton Bramble, an Individual (Charging Party Bramble) collectively (Charging Parties) against Ironworkers, Local 11 (Respondent), are consolidated.

This Order Consolidating Cases, Second Consolidated Amended Complaint and Notice of Hearing, which is based on these charges, is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq. and Section 102.15 of the Board's Rules and Regulations, and alleges Respondent has violated the Act as described below.

1. (a) The charge in Case 22-CB-237312 was filed by Charging Party Maglione on March 7, 2019, and a copy was served by regular mail on Respondent on March 8, 2019.

(b) The first amended charge in Case 22-CB-237312 was filed by Charging Party Maglione on April 23, 2019, and a copy was served by regular mail on Respondent on April 24, 2019.

(c) The second amended charge in Case 22-CB-237312 was filed by Charging Party Maglione on May 16, 2019, and a copy was served by regular mail on Respondent on May 20, 2019.

(d) The third amended charge in Case 22-CB-237312 was filed by Charging Party Maglione on June 28, 2019, and a copy was served by regular mail on Respondent on July 2, 2019.

(e) The fourth amended charge in Case 22-CB-237312 was filed by Charging Party Maglione on July 19, 2019, and a copy was served by regular mail on Respondent on July 22, 2019.

(f) The fifth amended charge in Case 22-CB-237312 was filed by Charging Party Maglione on October 29, 2019, and a copy was served by regular mail on Respondent on that same day.

2. (a) The charge in Case 22-CB-230929 was filed by Charging Party Babilonia on July 22, 2019, and a copy was served by regular mail on Respondent that same day.

(b) The first amended charge in Case 22-CB-230929 was filed by Charging Party Babilonia on September 23, 2019, and a copy was served by regular mail on Respondent on September 24, 2019.

3. The charge in Case 22-CB-246555 was filed by Charging Party Green on August 13, 2019, and a copy was served by regular mail on Respondent on August 14, 2019.

4. The charge in Case 22-CB-253114 was filed by Charging Party Babilonia on

December 9, 2019, and a copy was served by regular mail on December 10, 2019.

5. The charge in Case 22-CB-259493 was filed by Charging Party Bramble on April 23, 2020 and a copy was served by regular mail on that same date.

6. The charge in Case 22-CB-262466 was filed by Charging Party Richard Maglione on July 1, 2020 and a copy was served by regular mail on that same date.

7. (a) At all material times, the Associated Construction Contractors of New Jersey (ACCNJ), with an office and a place of business in Edison, New Jersey, has been an organization composed of various employers engaged in the construction industry, one purpose of said ACCNJ is to represent its employer-members in negotiating and administering collective- bargaining agreements with labor organizations, including Respondent.

(b) The employer-members of ACCNJ described above in paragraph 5(a), in conducting their various business operations in the preceding 12-month period, collectively purchased and received at their facilities located within the State of New Jersey, goods valued in excess of \$50,000, directly from points outside the State of New Jersey.

(c) The employer-members of ACCNJ described above in paragraph 5(a), in conducting their various business operations in the preceding 12-month period, collectively performed services valued in excess of \$5,000 in states other than the State of New Jersey.

(d) At all material times the employer-members of ACCNJ have been employers engaged in commerce within the meaning of Section 2(2), 2(6) and 2(7) of the Act.

8. (a) At all material times Construction Contractors Labor Employers of New Jersey (CCLE), with an office and a place of business in Allenwood, New Jersey, has been an organization composed of various employers engaged in the construction industry, one purpose of CCLE is to represent its employer-members in negotiating and administering collective- bargaining agreements with labor organizations, including Respondent.

(b) The employer-members of CCLE, described above in paragraph 6(a), in

conducting their various business operations in the preceding 12-month period, collectively purchased and received at their facilities located within the State of New Jersey, goods valued in excess of \$50,000, directly from points outside the State of New Jersey.

(c) The employer-members of CCLE, described above in paragraph 6(a), in conducting their various business operations in the preceding 12-month period, collectively performed services valued in excess of \$5,000 in states other than the State of New Jersey.

(d) At all material times the employer-members of CCLE have been employers engaged in commerce within the meaning of Section 2(2), 2(6) and 2(7) of the Act.

9. (a) At all material times the New Jersey Steel Association, Inc. (NJSAI), with an office and a place of business in Springfield, New Jersey, has been an organization composed of various employers engaged in the construction industry, one purpose of NJSAI is to represent its employer-members in negotiating and administering collective-bargaining agreements with labor organizations, including Respondent.

(b) The employer-members of NJSAI, described above in paragraph 7(a), in conducting their various business operations in the preceding 12-month period, collectively purchased and received at their facilities located within the State of New Jersey, goods valued in excess of \$50,000, directly from points outside the State of New Jersey.

(c) The employer-members of NJSAI described above in paragraph 7(a), in conducting their various business operations in the preceding 12-month period, collectively performed services valued in excess of \$5,000 in states other than the State of New Jersey.

(d) At all material times the employer-members of NJSAI have been employers engaged in commerce within the meaning of Section 2(2), 2(6) and 2(7) of the Act.

10. (a) At all material times the Rigging Contractors of New Jersey (RCNJ), with an office and a place of business in Sommerville, New Jersey, has been an organization composed of

various employers engaged in the construction industry, one purpose of RCNJ is to represent its employer-members in negotiating and administering collective-bargaining agreements with labor organizations, including Respondent.

(b) The employer-members of the RCNJ described above in paragraph 8(a), in conducting their various business operations in the preceding 12-month period, collectively purchased and received at their facilities located within the State of New Jersey, goods valued in excess of \$50,000, directly from points outside the State of New Jersey.

(c) The employer-members of RCNJ, described above in paragraph 8(a), in conducting their various business operations in the preceding 12-month period, collectively performed services valued in excess of \$5,000 in states other than the State of New Jersey.

(d) At all material times the employer-members of RCNJ have been employers engaged in commerce within the meaning of Section 2(2), 2(6) and 2(7) of the Act.

11. At all material times Respondent has been a labor organization within the meaning of Section 2(5) of the Act.

12. At all material times the following individuals held the positions set forth opposite their respective names and have been agents of Respondent within the meaning of Section 2(13) of the Act:

Ray Woodall	Business Manager
Mike Leslie	Business Agent
Mike McKeman	Business Agent
John Wade	Business Agent
James Creagen	Business Agent
Rich Malcolm	Business Agent

13. At all material times, Respondent, ACCNJ and CCLE have been parties to a collective bargaining agreement (CBA), the most recent of which was extended by Memorandum

of Understanding expiring on June 30, 2021, and which contains the following language requiring that Respondent be the exclusive source of referrals of employees for employment with employer-members of ACCNJ and CCLE:

Every Employer bound hereby agrees that he will recruit all employees covered hereby exclusively through the several hiring halls operated by the Union and/or its Locals. The said hiring halls shall be operated by the Union and its Locals in a non-discriminatory manner. (Rigging CBA: Article XIV, Section 1)

14. At all material times, Respondent has maintained a collective bargaining agreement ("Structural CBA") with NJSAI and RCNJ and individual employers, the most recent of which expires on June 30, 2021, and which contains the following language requiring that Respondent be the exclusive source of referrals for employees for employment with employer-members of the Structural CBA:

Every Employer bound hereby agrees that he will recruit all employees covered hereby exclusively through the several hiring halls operated by Local 11. The said hiring halls shall be operated by Local 11 in a nondiscriminatory manner. (Structural CBA: Article XV)

15. At all material times, since at least 2018, Respondent has been required to abide by a set of rules and procedures governing the operation of its hiring hall which requires, among other things, that:

(a) respondent refer hiring hall applicants to jobs with employer-member/signatories to the CBA and Structural CBA, in the order of their place on the hiring hall referral list ("Referral List"), except where:

i. the next available applicant on the referral list does not possess the skills and abilities requested by the contractor, in which case the Respondent would refer the first applicant on the referral list that possesses such skills and abilities;

ii. A contractor may request a specific member(s). When such a specific request is made, the member requested will be referred to the contractor out of sequence of the referral list and as such will not follow the normal referral order;

(b) if a job referral lasts less than three (3) days, a member can request to be placed on the

"short list" (One-Day List) and will be referred out based on his or her placement on that list. If a member's name is called and he is not present or refuses the referral, it will be counted as an absence;

(c) respondent select and refer applicants for employment without discriminating against such applicants by reason of membership or non-membership in the Union; and

(d) a copy of the hiring hall rules and procedures be posted in a bulletin board in Respondent's office.

Cases 22-CB-237312, 22-CB-262466 and 22-CB-246555

16. Since about September 7, 2018, Respondent, at its Bloomfield and Perth Amboy locations has operated its exclusive hiring hall in an arbitrary and discriminatory manner by deliberately departing from rules and procedures governing its hiring hall by:

(a) failing to maintain full and complete referral records;

(b) failing to maintain and communicate to its job applicants rules for job referrals;

(c) failing to post its hiring hall rules, including rules regarding Responsibility to Replace;

(d) failing and refusing to maintain and follow hiring rules and procedures which require referral based on applicants place on the Referral List, rather than for favoritism or some other arbitrary or discriminatory reason;

(e) refusing to maintain and follow clear non-arbitrary hiring hall rules and procedures regarding applicants placement on the One-Day List;

(f) refusing to allow applicants, including Charging Parties Maglione and Babilonia, who were referred to jobs that lasted less than three (3) days, to sign the One-Day List;

(g) failing to refer Charging Party Maglione to jobs which he was eligible for based on his place on the Referral List, to employers who exclusively use Respondent as a source of employment, and instead referring applicants who signed the Referral List on a date after Maglione;

(h) failing and refusing to refer applicants, including Charging Party Green, to jobs which

they were eligible for based on their place on the Referral List, with employers who exclusively use Respondent as a source of employment, and instead referring applicants who signed the Referral List on a date after Green and other applicants;

- (i) failing and refusing to allow non-members participants, including Charging Party Babilonia, to sign the Referral List;

- (j) failing to apply objective criteria to its referral of Travelers or other job applicants who are non-members; and

- (k) refusing to allow applicants, including Charging Party Maglione, to review the Referral List upon request.

17. Respondent engaged in the conduct described above in paragraph 16 for arbitrary and discriminatory reasons.

18. Since about September 7, 2019 and at all material times Respondent, at its Bloomfield and Perth Amboy locations, refused to refer Charging Party Maglione to jobs, which he was eligible for based on his place on the Referral List, with employers who exclusively use Respondent as a source of employment, because Charging Party Maglione:

- (a) requested to review the Referral List, and

- (b) complained about Respondent to the International Association of Ironworkers.

19. On about October 22, 2018, February 16, 2019 and June 21, 2019, Respondent refused to allow Charging Party Maglione to sign the One-Day List.

20. About March 11, 2019, Respondent refused Charging Party Maglione's request to review Steward Reports, his personnel file and letters from employer-members/signatories to the CBA and Structural CBA, who allegedly refused to hire Charging Party Maglione.

Case 22-CB-230929

21. On about September 24, 2019 and December 4, 2019, Respondent at its Bloomfield and

Perth Amboy locations, failed and refused to allow Charging Party Babilonia to sign the Referral List for jobs, which he was eligible for based on his place on the Referral List, with employers who exclusively use Respondent as a source of employment and instead referred other applicants who signed the Referral List after Babilonia.

22. Respondent engaged in the conduct described above in paragraphs 16 through 21 for reasons that are arbitrary and discriminatory.

Cases 22-CB-253114 and 22-CB-259493

23. (a) About October 16, 2019, Respondent implemented a priority referral system that divided job applicants among the following four (4) priority groups:

Group I - All applicants for employment who: (a) (1) have fifteen or more years' experience in the trade; or (2) have four (4) or more years' experience in the trade and have either passed a recognized journeyman examination or have been certified as a journeyman by an Apprenticeship Committee; and (b) are residents of the geographical jurisdiction constituting the normal construction labor market; and (b) of the geographical jurisdiction constituting the normal construction labor market; and (c) have been employed for a period of at least one (1) year in the last four (4) years under any collective bargaining agreement to which Local 11 is bound;

Group 2 - All applicants for employment who have four (4) or more years' experience in the trade and have passed a recognized journeyman examination or have been certified as a journeyman by an Apprenticeship Committee.

Group 3 - applicants for employment who have two (2) or more years' experience in the trade, are residents of the geographical jurisdiction constituting the normal construction labor market and who have been organized by an Iron Worker Local Union and who have been employed for at least six (6) months in the last three (3) years in the trade under a collective bargaining agreement between Local 11 and the Contractors Associations.

Group 4 - All applicants who have worked in the trade for more than one (1) year.

(b) The priority referral system described above in paragraph 23 gave preference to applicant members over non-members who had not had the opportunity to complete Respondent's

apprenticeship program.

(c) Respondent engaged in the conduct described above in paragraphs 23(a) and 23(b) in order to disadvantage non-members applicants, including Babilonia, Bramble and other applicants.

24. On about November 27, 2019 and continuing to date, Respondent has refused Charging Party Babilonia's request to access and copy the Referral List.

25. On about November 17, 2019 and December 5, 2019 Respondent refused to allow Charging Party Babilonia to sign the One-Day List.

26. Respondent engaged in conduct described above in paragraphs 23 through 25 for arbitrary and discriminatory reasons.

27. By engaging in the conduct described above in paragraphs 16 through 20 and 23 through 25, Respondent has failed to represent the Charging Parties and all other hiring hall users for reasons that are arbitrary, discriminatory, or in bad faith, and has breached the fiduciary duty it owes to all of its hiring hall users.

28. By the conduct described above in paragraphs 16 through 20 and 23 through 25, Respondent has been restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(b)(1)(A).

29. By the conduct described above in paragraphs 16 through 20 and 23 through 25, Respondent has been attempting to cause an employer to discriminate against its employees in violation of Section 8(a)(3) of the Act in violation of Section 8(b)(2) of the Act.

The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

WHEREFORE, as part of the remedy for the unfair labor practices alleged above in paragraphs 16 through 20 and 23 through 25, the General Counsel seeks and Order requiring that Respondent make

Charging Parties, and any other affected employees, whole for any loss of earnings suffered as a result of the unfair labor practices alleged herein.

General Counsel further seeks an Order requiring Respondent to revise its hiring hall referral rules and procedures to eliminate any potential for discrimination in the referral of its applicants.

General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices herein.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before January 12, 2021.** Respondent should serve a copy of the answer on each of the other parties.

An answer must be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the

answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on the **20th day of April, 2021, 9:30 a.m.** and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to present testimony regarding the allegations in this complaint. Pursuant to the Board's rules at 102.35(c), due to "compelling circumstances" created by the current Coronavirus Disease (COVID-19) pandemic and CDC guidelines on mitigating the risk of contracting Coronavirus, the trial in this matter will be conducted remotely via video using Zoom technology. *See Morrison Healthcare*, 369 NLRB No. 76 (2020).

Details regarding how to connect to the hearing will follow. The parties are urged in the meantime to consult and cooperate with the Division of Judges or the assigned Judge regarding how the Judge will conduct the hearing, including how the parties will prepare

witnesses, number and offer of documents and exhibits, and whether there will be public access to the hearing. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated: December 29, 2020

A handwritten signature in cursive script, reading "David E. Leach III".

DAVID E. LEACH III, REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 22
20 WASHINGTON PLACE, FLOOR 5
NEWARK, NJ 07102-3127

Attachments

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
NOTICE

Cases 22-CB-237312 et al.

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements ***will not be granted*** unless good and sufficient grounds are shown ***and*** the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in ***detail***;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

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Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: www.nlrb.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf.

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at www.nlrb.gov, click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement. The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.
- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence:** At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.
- **Exhibits:** Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered in evidence. If a copy of any exhibit is not available when the original is received, it will be the responsibility

of the party offering such exhibit to submit the copy to the ALJ before the close of hearing. If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

- **Transcripts:** An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.
- **Oral Argument:** You are entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, if it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.
- **Date for Filing Post-Hearing Brief:** Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and to will set a deadline for filing, up to 35 days.

III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.
- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.
- **Exceptions to the ALJ's Decision:** The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.